



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 15-Mar-07
Time 4:09 PM

Dated: 15-Mar-2007

TRANSMITTAL No: KFM-TRN-000510

Rev: 00

To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier:
Sub/Supplier No:

Subject: KFM to Dispute Review Board Letter 0001; NOPC #4-012207-
Referral to Board

Special Provis. (SP) REF:
Standard Spec. (SS) REF:

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items: ☒ Attached

☐ Via Fax

<input type="checkbox"/> Contract Plans/Specs	<input type="checkbox"/> Certs of Compl./Samples
<input type="checkbox"/> Drawings/Calculations	<input type="checkbox"/> Schedule
<input type="checkbox"/> Change Order	<input type="checkbox"/> Progress Estimate Request
<input checked="" type="checkbox"/> Copy of Letter	<input type="checkbox"/> Payroll Information

<input type="checkbox"/> Working Drawings
<input type="checkbox"/> WQCP and/or Addenda
<input type="checkbox"/> Weekly Welding Reports
<input type="checkbox"/> CWR Procedure

Item	Date	Copies	Description	Pages
01	15-Mar-2007	1	KFM to Dispute Review Board Letter 0001; NOPC #4-012207-Referral to Board	15

These are transmitted as checked below:

<input type="checkbox"/> For Approval	<input type="checkbox"/> For Review/Comment	<input type="checkbox"/> Return For Correction
<input checked="" type="checkbox"/> For Your Use	<input type="checkbox"/> As Requested	<input checked="" type="checkbox"/> For Information

Remarks:

CC:

Submitted By:

Shelley Burks

(KFM Staff Member – Originator of Transmittal)

Checked & Sent By:

Contract Admin/DCS Staff



Copy To: Job Office Files

An Equal Opportunity Employer

Page 1 of 1



March 14, 2007

Serial Letter: KFM-DRB-LTR-000001

Dispute Review Board (DRB)
1122 Ferguson Road
Sebastopol, CA 95472

Attention: Mr. Warren Bullock, DRB Member

Reference: SAS E2/T1 Foundation Project
(Caltrans Contract No. 04-0120E4)
KFM Job No. 364/4347, SAS Foundations E2/T1

Subject: NOPC #04 – 012207 – Referral to Board

Dear Warren,

Please find attached, Notice of Potential Claim #04-012207. This NOPC remains in dispute and in accordance with Section 5-1.15, "Disputes Review Board" of the Special Provisions, KFM hereby refers this NOPC to the Disputes Resolution Board. KFM requests that a hearing on this matter be scheduled in accordance with Section 5-1.15, "Disputes Review Board".

If you have any comments or questions, please contact this office.

Sincerely,
KIEWIT/FCI/MANSON, a JV

Lee Zink
Project Director

cc: Mr. Richard Lewis – DRB Member
Mr. Ronald Maasberg – DRB Member
Mr. Pedro Sanchez – Resident Engineer
Mr. Ali Abbas – Norcal Structural

attach: KFM Letter #249 – Protest to State Response presented in CTL#2902
State Letter #2902 – Response to Supplemental Notice of Potential Claim
Transmittal #478 – Initial Notice of Potential Claim #04-012207
Transmittal #488 – Supplemental Notice of Potential Claim #04-012207



March 13, 2007

Serial Letter: KFM-LET-000249

California Department of Transportation
SFOBB – E2T1 Project
333 Burma Road
Oakland, CA 94607

Attention: Pedro Sanchez

Reference: SAS E2/T1 Foundation Project
Caltrans Contract No 04-0120E4
KFM Job No. 364/4347
State Letter #05.003.01-002902, dated February 26, 2007

Subject: NOPC #04-012207 - Protest to State Response

Dear Pedro:

In accordance with Special Provision Section 5-1.15, "Disputes Review Board", KFM would like to take this opportunity to reply to the State's response to KFM's NOPC #04-012207. It is our hope that the following discussion of the key elements involved in this dispute will clearly illustrate the basis of our objection.

Element #1 – Contract Interpretation Discrepancies

On August 3, 2004, Caltrans, KFM and its key subcontractors held the first partnering session. Of the many goals of this meeting, one was the flowcharting of the main contract specifications that would guide the work. People from all sides gathered together to flowchart the Special Provision 5-1.105, "Integrated Shop Drawings". It was then, that attention was drawn very quickly to the fact that KFM/Norcal's interpretation of this contract specification was quite different from the State's.

As a result, several conversations ensued thereafter. Most significantly, the State and KFM developed a set of "Guidelines for the ISD Process" and memorialized them in a handout dated August 17, 2004. In it, definition of extra work and potential extra work was documented. In short, all solutions beyond the specified "A-F" solutions were to be considered either as "extra work" if the solution required redrafting or "potentially no extra work" if the solution did not require redrafting.

All of the subject RFIs in NOPC #4 required redrafting and additional conflict checks prior to final submittal to the State in the Spring of 2007. As defined in the "Guidelines for the ISD Process", all solutions requiring redrafting were to be considered "extra work" and subject to compensation under Standard Specification Section 4-1.03D, "Extra Work".

It is with this guiding principle in mind that Norcal and KFM requested additional compensation for this effort.

Element #2 – Contract Change Order #29 – Compensation Allotment

On July 29, 2005, the Department of Transportation issued a letter to KFM withdrawing the temporary termination issued on January 5, 2005. KFM obliged itself to submit a restart schedule by August 29, one month later. This, along with subcontractors' termination/restart proposals, would form the basis of determining the total compensation KFM would be entitled to under the pending CCO#29.

On September 20, 2005, KFM received Norcal Letter #4 which provided Norcal's "Contract Restart: Cost to Completion" proposal. There were essentially two components to the proposal: costs as a result of the termination/restart itself and an estimate of the costs to incorporate all subject RFIs into the final ISD package. The first component was valued at approximately \$50,000 and the second component at approximately \$200,000.

However, the State limited the scope of CCO#29 to cover only those costs associated with restarting and completing the work as described in the base contract, previous CCOs and CCO#29 itself. Final CCO#29 language went on to state that "It is the intent of the parties that the compensation provided in this CCO, together with all other CCOs issued prior to the date of acceptance of this CCO and the base contract, will resolve all issues related to restarting the contract and establish a new contract price for the completion of the contract, except as listed in Section 4.0 of this CCO" [emphasis added].

Norcal's September 20th proposal had two components; only the first component qualified under the terms of CCO#29. And, as such, the State allotted the \$50,000 for that work as part of the the final CCO#29 compensation package. The second component was not an issue related to restart and fell outside of the original contract scope. Therefore, the second component of Norcal's proposal, at an estimated cost of approximately \$200,000 for the incorporation of the RFI resolutions was not considered in the final CCO#29 compensation package.

There were other similar contractual issues that were set aside during the CCO#29 negotiations as well because they were not restart issues or part of the original contract scope. Two examples include the Isolation Material Specification Change that was later handled in CCO#30 and the UT-PJP Change that was handled in CCO#31. The extra work associated with incorporating the RFI resolutions into the final ISD submittal was of similar nature.

Only \$50,000 of the total \$81M allowed under CCO#29 was allocated to KFM on Norcal's behalf. This can be verified by the official accounting records for CCO#29. As a result, KFM issued a Service Agreement Change Order #2 to Norcal's contract for \$46,000 to cover all termination claim issues and to extend their professional liability insurance. Language was also included to address how KFM would assist Norcal in the pursuit and financing of any future potential claims on remaining work. This change order was executed on February 23, 2006.

Element #3 – Timeliness

Twenty-four RFIs, confirming conflict resolutions discussed in the Working Drawing Campus, were submitted to the State for their response between November 18, 2004 and January 4, 2005; all before the temporary contract termination was issued on January 5, 2005.

Twelve of the responses were received prior to the temporary contract termination as well, between the dates December 10, 2004 and December 24, 2004. No significant action was taken on these since the contract was terminated shortly thereafter. The other twelve were responded to by the State after the temporary termination was withdrawn on July 29, 2005. These responses came between the dates of August 2, 2005 and November 11, 2005.

Norcal Structural incorporated the responses to the RFIs into the final ISD package between January 2006 and June 2006. Timecards were monitored throughout this period to verify time spent on this effort. The final ISD package was divided into two submittals, one for each of the pier locations. The E2 package was submitted on May 3, 2006 and approved on May 30, 2006 and the T1 package was submitted on June 12, 2006 and approved on June 27, 2006.

State letter #1489, dated June 30, 2006 directed the incorporation of the approved ISD revisions and all related RFI responses into the work. It was stated that payment for extra work associated with applying the resolutions and RFI responses would be addressed under CCO#41, all in accordance with Specification Section 4-1.03, "Changes".

Later on September 13, 2006, State letter #1869, issued revised contract plans that would illustrate the resolutions and RFI responses. Again, it was stated that payment for extra work and changes in contract item quantities associated with applying these revised contract plans to the construction would be addressed in pending CCO#41.

It was on this basis that KFM forwarded Norcal's final request for compensation for their extra work performed to incorporate the changes illustrated in CCO#41 into the final ISD package. Norcal's final request for compensation, provided in their letter #11, dated November 27, 2006, was forwarded to the State on December 6, 2006 under KFM letter #223.

The State responded on January 17, 2007, via State letter #2563, denying Norcal's request for compensation, thus prompting the filing of the Initial Notice of Potential Claim five days later on January 22, 2007, the Supplemental Notice of Potential Claim on February 6, 2007 and the State's rejection of the NOPC #4 on February 26, 2007.

Summary

It is with these elements in mind along with the contract specifications and our change order with Norcal that KFM pursues this claim on Norcal's behalf. It is KFM's desire that the State revisit their position on this issue with the above elements in mind and allow compensation for Norcal's effort in pursuing the ISD work through to completion so as to provide a complete and accurate representation of the ISD work and so as to not delay the project's completion.

Sincerely,
KIEWIT/FCI/MANSON, a JV


For
Lee Zink
Project Director



March 13, 2007

George Atkinson
KIEWIT/FCI/MANSON JV
220 Burma Road
Oakland, CA 94607

Letter No. NS-KFM-LTR-15

Subject: Letter of Protest for Supplemental NOPC #04-012207
NorCal Structural Request for Compensation for Extra Work for Incorporation of KFM RFI's
100, 102, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, 131R1,
132, 133, 136, 137, 138, 140, etc. into the Integrated Shop Drawings

Dear George,

We are in receipt of Caltrans Letter No. 05.003.04-002902 dated February 26, 2007, which provides response to Contractor's Supplemental Notice of Potential Claim (NOPC) #04-012207. In response, this letter is to protest the Department's position regarding the subject NOPC for compensation of extra work for incorporation of the subject RFIs into the Integrated Shop Drawings (ISD).

We understand that the Department has acknowledged and agreed with our position regarding the deficiencies of Section 5-1.105 "Integrated Shop Drawings" of the Special Provisions, which establishes the merit of our request for additional compensation for the incorporation of the subject RFI's into the ISD work. We further understand that supplemental 'Guidelines for ISD Process' were developed by the Department and the Contractor in August 2004. These guidelines defined the process of development of the ISD and provided procedures for recognizing and compensating extra work. Please note that NorCal Structural (formerly AGCE) had provided Working Drawing Campus (WDC) coordination and ISD conflict resolution work in accordance with the said 'Guidelines' document. All conflicts that could not be resolved by the Contractor through the procedures "A-F" provided in the specification were duly presented at the WDC to the Engineer. The Engineer then directed the resolution of such conflicts which were then documented through RFIs issued by the Contractor. When the subject RFIs were incorporated in the ISD during the period January 2006-June 2006, weekly timecards for all ISD work were duly submitted by NorCal Structural in accordance with the 'Guidelines' document. Final time summaries and costs for extra work were submitted via Letter NS-KFM-LTR-07 Dated July 18, 2006, and resubmitted with supplemental information via NS-KFM-LTR-10 Dated November 20, 2006. Please note that all work for the incorporation of the subject RFI's was performed in the January 2006 to June 2006 period, as substantiated by actual time records submitted by NorCal Structural. Please also see attached 'Timeline' which clearly establishes the period of execution of the subject extra work.

The Department has suggested that compensation for extra work for incorporating KFM RFIs #100, 102, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125 and 130 was included in the full and final compensation provided in CCO 29. NorCal Structural had submitted 'Costs to Completion' for ISD work via Letter AGC-KFM-04 dated September 10, 2005, which had included an estimate for the incorporation of above listed RFIs into the ISD. However, at Project Restart, NorCal Structural was only paid \$46,000 via KFM-AG CO#2, which included \$25,250 for direct labor cost during project suspension (Jan 2005 to Jan 2006) & costs of document review for Restart, and \$20,750 for costs for professional liability insurance during suspension. Therefore, no compensation was allocated to NorCal Structural for the incorporation of the subject RFIs into the ISD at the Project Restart under CCO #29. Accordingly, we disagree with the Department's analysis that NorCal Structural has already been compensated for the subject extra work under CCO #29.

2550 Ninth Street, Suite 206 Berkeley, CA 94710
T: (510) 550-7511 F: (510) 550-7520



NS-KFM-LTR-15

March 13, 2007

George Atkinson/Kiewit-FCI-Manson JV

Page 2 of 2

Further, we disagree with Department's position on KFM RFI #131R01. We believe that work performed for incorporation of RFI 131 and 131R01 is extra work in accordance with the 'Guidelines for ISD Process' since these RFIs represented documentation and follow-up of a design change directed by the Engineer in the Working Drawing Campus. This design change resulted in extra work for NorCal Structural, which consisted of complete redrafting of reinforcing steel including detailing of bar bending shapes and 3D CAD modeling of the wall reinforcement in Pier E2 East & West footings.

At restart of work in January 2006, NorCal Structural proceeded with the work for incorporation of design changes for the subject RFIs into the ISD in accordance with the procedures provided by the 'Guidelines for ISD Process'. Accordingly, NorCal Structural had submitted weekly timecards which indicated breakdown of extra work for incorporation of each RFI into the ISD. In addition, NorCal Structural had duly provided 'Potential Cost Impact' and 'Potential Time Impact' notifications on all subject RFIs. Also, NorCal Structural Letter AGC-KFM-04 dated September 10, 2005, Item 4, had notified of additional estimated costs for incorporation of several of the subject RFIs into the ISD.

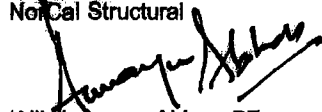
Further, please note that the Department has not addressed the issue of compensation for extra work for incorporation of KFM RFIs 132, 133, 136, 137, 138, and 140, etc. into the ISD. We maintain that these RFIs document design changes as directed by the Engineer in the Working Drawing Campus. As such, the work done for the incorporation for these RFIs into the ISD is extra work and that NorCal Structural should be compensated for these costs.

Based on the above, we disagree with the Department's analysis of Supplemental NOPC 04-012207 and request the Department to reconsider its position in view of the information presented herein and in the subject NOPC, and to compensate us for additional costs per the subject NOPC.

Finally, we would request the Department to consider that NorCal Structural has provided services for extra work for over \$200,000 on this project after Restart and we have not been paid for this work to-date, except for an advance payment of \$105,983 by KFM JV in January 2007. We are a small, disadvantaged business that is barely surviving and we have been severely impacted by the costs incurred for this extra work. We had to finance this work on personal credit cards and loans of over \$120,000 at exorbitant interest rates. This financial burden has driven us to the verge of bankruptcy. At the time of restart of the project, we were given the option of taking termination but instead we chose to complete the work in a professional manner. If we had taken termination, engagement of another consultant, who would not be familiar with the work, would have required additional time and costs to accommodate the learning curve and to complete the ISD work. This certainly would have resulted in significant delays and higher costs to the Project. Our continued participation in the project has resulted in on-schedule delivery of an outstanding ISD package to the State, thereby protecting a vital public safety project from unnecessary delays and stoppages. We do hope that the Department will give due consideration to our services to this project in its review of our request for compensation of extra services.

If you need any further information, please contact me at (510) 550-7512 or (510) 282-6995.

Sincerely,
NorCal Structural



'Ali' Humayun Abbas, PE
Principal

Enclosures:

- NorCal Structural Timeline for Post-Restart Design-Change RFI Incorporation into the ISD

Cost to Completion Estimate submitted to KFM
Sep 10, 2005



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 06-Feb-07
Time 4:02 PM

Dated: 06-Feb-2007

TRANSMITTAL No: KFM-TRN-000488

Rev: 00

To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier: AGC
Sub/Supplier No:

Subject: Notice of Potential Claim #04-012207

Special Provis. (SP) REF: 9-1.04
Standard Spec. (SS) REF: 5-1.0105

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items: ☒ Attached

☐ Via Fax

- | | | |
|--|--|---|
| <input type="checkbox"/> Contract Plans/Specs | <input type="checkbox"/> Certs of Compl./Samples | <input type="checkbox"/> Working Drawings |
| <input type="checkbox"/> Drawings/Calculations | <input type="checkbox"/> Schedule | <input type="checkbox"/> WQCP and/or Addenda |
| <input type="checkbox"/> Change Order | <input type="checkbox"/> Progress Estimate Request | <input type="checkbox"/> Weekly Welding Reports |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Payroll Information | <input type="checkbox"/> CWR Procedure |

Item	Date	Copies	Description	Pages
01	06-Feb-2007	0	04-012207 - CEM-6201B - Supplemental Notice of Potential Claim	

These are transmitted as checked below:

- | | | |
|--|---|--|
| <input type="checkbox"/> For Approval | <input type="checkbox"/> For Review/Comment | <input type="checkbox"/> Return For Correction |
| <input checked="" type="checkbox"/> For Your Use | <input type="checkbox"/> As Requested | <input type="checkbox"/> For Information |

Remarks:

Attached, please find Form Cem-6201B - Supplemental Notice of Potential Claim for the incorporation of CCO#41 changes into the final ISD submittal.

CC:

Submitted By: Meda Schultz
(KFM Staff Member - Originator of Transmittal)

Checked & Sent By: SPURK
Contract Admin/DCS Staff

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL NOTICE OF POTENTIAL CLAIM
CEM-6201B (NEW 9/2002)

FOR STATE USE ONLY	
Received	Date
(For resident engineer)	

TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
PEDRO J. SANCHEZ (resident engineer)	04-0120E4	February 6, 2007	04-012207

This is a Supplemental Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

The particular nature and circumstances of this potential claim are described in detail as follows:

Specification Section 5-1.0105 of the Special Provisions, which governs the integrated shop drawing (ISD) process, is ambiguous, vague, and incomplete, in terms of the required magnitude and scope of effort necessary for implementation of this work into the project. During the development of the ISD's, numerous reinforcing steel conflicts were encountered that required several design changes to resolve. These issues were raised via KFM RFI's # 100, 102, 104, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, 131R1, 132, 133, 136, 137, 138 & 140, etc. The conflict resolutions were provided by the Engineer in the form of design changes and are contained in the proposed Contract Change Order #41. State Letter #1485, dated June 30, 2006, requested that additional costs related for the incorporation of the conflict resolution RFI's be included in CCO #41. Cont'd. See Page 1/4.

(attach additional sheets as needed)

The basis of this potential claim including all relevant contract provisions are listed as follows:

Special Provisions Section 5-1.0105 did not define a reasonably comprehensible scope of work for ISD since the nature, extent and severity of the reinforcing steel conflicts could not have been established at bid time. The Contractor is required to provide conflict resolutions through the "A-F" procedures listed in the Special Provisions. However, the specifications provided vague and ambiguous procedures for conflict resolution and did not define the extent to which these procedures were to be applied. These open ended procedures proved to be unworkable since within the Contractor's scope of responsibility, only those resolutions that fall within the allowable tolerances prescribed by BDS/ACI/CRSI standards of practice for detailing and placement of reinforcing steel and that do not constitute a design change, can be implemented. Cont'd. See page 2/4.

(attach additional sheets as needed)

The estimated dollar cost of the potential claim including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto.

Norcal Structural is in the process of compiling additional costs incurred for this claim. However, in letter # NS-KFM-LTR-010 dated November 20, 2006, NCS requested \$211,966.00 as our preliminary claim. Cont'd. See Page 3/4.

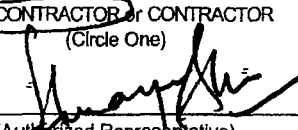
(attach sheets as required)

A time impact analysis of the disputed disruption has been performed and is attached hereto. The affect on the scheduled project completion date is as follows:

No adjustment to contract time is requested based upon this dispute.

(attach time impact analysis as required)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

NORCAL STRUCTURAL
SUBCONTRACTOR or CONTRACTOR
(Circle One)

(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded

KIEWIT - FCI - Manson, A Joint Venture
PRIME CONTRACTOR


(Authorized Representative)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

The particular nature and circumstances of this claim are described in detail as follows:

Specification Section 5-1.0105 of the Special Provisions, which governs the integrated shop drawing (ISD) process, is ambiguous, vague, and incomplete, in terms of the required magnitude and scope of effort necessary for implementation of this work into the project.

During the development of the ISD's, numerous reinforcing steel conflicts were encountered that required several design changes to resolve. These issues were raised via KFM RFI's # 100, 102, 104, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, 131R1, 132, 133, 136, 137, 138 & 140, etc. The conflict resolutions were provided by the Engineer in the form of design changes and are contained in the proposed Contract Change Order #41. State Letter #1485, dated June 30, 2006, requested that additional costs related for the incorporation of the conflict resolution RFI's be included in CCO #41.

Incorporation of these Engineer directed design changes into the ISD required several cycles of re-drafting for 3D CAD modeling, additional conflict checks and conflict resolutions. This additional scope of work is beyond that defined in the Special Provisions, as the nature of the conflicts and the subsequent design changes could not have been reasonably contemplated at bid time. Accordingly, KFM requested compensation on behalf of its ISD consultant Norcal Structural (NCS), for the added work necessary to incorporate design changes into the contract work.

KFM Serial Letter #223, dated December 6, 2006, forwarded NCS's request for additional compensation under CCO#41. State Letter #2563, dated January 17, 2007, denied this request and led to this dispute.

The basis of this potential claim including all relevant contract provisions are listed as follows:

Special Provisions Section 5-1.0105 did not define a reasonably comprehensible scope of work for ISD since the nature, extent and severity of the reinforcing steel conflicts could not have been established at bid time. The Contractor is required to provide conflict resolutions through the "A-F" procedures listed in the Special Provisions. However, the specifications provided vague and ambiguous procedures for conflict resolution and did not define the extent to which these procedures were to be applied. These open ended procedures proved to be unworkable since within the Contractor's scope of responsibility, only those resolutions that fall within the allowable tolerances prescribed by BDS/ACI/CRSI standards of practice for detailing and placement of reinforcing steel and that do not constitute a design change, can be implemented. Such specification issues were also raised in bidder's inquiry #88 but were not resolved by the Engineer at bid time. Any conflict resolutions that constitute design changes must be provided by the Engineer via a contract change order. Incorporation of these design changes into the ISD resulted in additional effort and extra work.

Accordingly, conflicts that could not be resolved within the specification were presented to the Engineer. Several design changes were provided by the Engineer via responses to KFM RFI's # 100, 102, 104, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, 131R1, 132, 133, 136, 137, 138 & 140, etc. for resolution of numerous conflicts for both E2 & T1 Footings reinforcing steel, as documented in CCO #41. The Engineer-directed conflict resolutions included:

- Complete change of T1 Wall reinforcing steel layout and bending details;
- Complete change of E2 Column horizontal & architectural reinforcing steel layout and bending details;
- Major revisions in E2 Fender reinforcing steel layout and bending details;
- Revisions in E2 Link Girder reinforcing steel placement and bending details;
- Revisions in T1 Skirt Pedestal reinforcing steel placement and bending details;
- Revisions in T1 Fender Corbel reinforcing steel placement and bending details.

Incorporation of these design changes in the ISD resulted in additional effort for NCS consisting of re-detailing and re-drafting for 3D CAD models, consequential additional conflict checks after incorporation of design changes, and additional resolution of conflicts.

This additional work was directed by the Engineer, as is evidenced by the incorporation of subject design changes in CCO #41, and when compared to a reasonable interpretation of the scope of work as defined by Section 5-1.0105, it is 'new and unforeseen work' and therefore compensable per Section 4-1.03D.

The estimated cost of the potential claim, including a description of how the estimate was derived and an itemized breakdown of individual costs are attached hereto:

Norcal Structural is in the process of compiling additional costs incurred for this claim. However, in letter # NS-KFM-LTR-010 dated November 20, 2006, NCS requested \$211,966.00 as our preliminary claim. The preliminary costs are based on actual hours spent for incorporation of the design changes into ISD as documented in Engineer's responses to KFM RFI's # 100, 102, 104, 105, 106, 119, 120, 121, 147, 112, 113, 114, 122, 123, 124, 125, 130, 131R1, 132, 133, 136, 137, 138 & 140, etc. and CCO #41, consequential additional conflict checks and additional conflict resolutions. The hourly charge rates are in accordance with KFM-NCS (formerly Abbas Group) contract. Timecards for this work were submitted on a weekly basis. Final detailed costs will be provided in accordance with contract specifications.

<u>Staff</u>	<u>Extra Work Hrs.</u>	<u>Cost/Hr.</u>	<u>Totals</u>
Ali Humayun Abbas	249.5	\$141.75	\$35,367
Paul X. Chiu	242	\$78.75	\$19,058
Engineer	1735	\$42.00	\$72,870
CAD Technician	2304	\$36.75	\$84,672
		Sub-Total	<u>\$211,966</u>
Costs of Claim Preparation			TBD
		Total Cost	<u>TBD</u>

*A time impact analysis of the disputed disruption has been performed and is attached hereto.
The effect on the scheduled project completion date is as follows:*

No adjustment to contract time is requested based upon this dispute.



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 22-Jan-07
Time 2:47 PM

Dated: 22-Jan-2007

TRANSMITTAL No: KFM-TRN-000478

Rev: 00

To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier: AGC
Sub/Supplier No:

Subject: Notice of Potential Claim #04-012207

Special Provis. (SP) REF: 9-1.04
Standard Spec. (SS) REF: 5-1.0105

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items:

☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☐ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	22-Jan-2007	0	04-012207 - CEM-6201A - Initial Notice of Potential Claim	

These are transmitted as checked below:

☐ For Approval

☐ For Review/Comment

☐ Return For Correction

☒ For Your Use

☐ As Requested

☐ For Information

Remarks:

Attached, please find Form CEM-6201A - Initial Notice of Potential Claim for the incorporation of CCO#41 changes into the final ISD submittal.

CC:

Submitted By: **Meda Schultz**

(KFM Staff Member - Originator of Transmittal)

Checked & Sent By:

[Signature]
Contract Admin/BOB Staff



FOR STATE USE ONLY	
Received	Date
(For resident engineer)	

TO	CONTRACT NUMBER	DATE	IDENTIFICATION NUMBER
PEDRO J. SANCHEZ (resident engineer)	04-0120E4	January 22, 2007	04-012207

This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

The particular nature and circumstances of this potential claim are described as follows:

Specification Section 5-1.0105 of the Special Provisions, which governs the integrated shop drawing (ISD) process, is ambiguous, vague, and incomplete, in terms of the required procedures for implementation of this work into the project. During the development of the ISD's, numerous reinforcing steel conflicts were encountered that required several design changes to resolve. These conflict resolutions were provided by the Engineer in the form of design changes and are contained in the proposed Contract Change Order #41. State Letter #1485, dated June 30, 2006, requested that additional costs related to the incorporation of the conflict resolution RFI's be included in CCO #41.

Incorporation of these design changes into the ISD required several cycles of additional drafting for 3D modeling, conflict checks, and conflict resolutions. This additional scope of work is beyond that defined within the Special Provisions, as the nature of the conflicts and the subsequent design changes could not have been reasonably contemplated by a bidder. Accordingly, KFM and its ISD subcontractor, Norcal Structural, are seeking additional compensation for the added work necessary for the incorporation of design changes into the ISD process.

KFM Serial Letter #223, dated December 6, 2006, forwarded Norcal's request for additional compensation. State Letter #2563, dated January 17, 2007, denied this request and prompted this initial NOPC.

(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

NORCAL STRUCTURAL

SUBCONTRACTOR or CONTRACTOR
(Circle One)

(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded

Kiewit/FCI/Manson, JV
PRIME CONTRACTOR

(Authorized Representative)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.